

WHEREAS, Ontel Products Corporation (“**Ontel**”) and World Pack USA, LLC (“**World Pack**”) (collectively, “**Defendants**”) have marketed, promoted and offered for sale in the United States the below bottle and sleeve called the “Rocky Mountain” bottle and “Rocky Mountain” sleeve, respectively.

Exemplary Image of the Rocky Mountain Bottle	Exemplary Image of the Rocky Mountain Coozie
	

WHEREAS, YETI objects to Ontel’s and World Pack’s offers to sell the Rocky Mountain bottle and the Rocky Mountain coozie, and initiated the above-captioned action, and, on February 8, 2017, filed a Complaint (D.I. 1) (the “**Complaint**”) for: (I) federal trade dress infringement under 15 U.S.C. § 1125(a); (II) federal unfair competition and false designation of origin under 15 U.S.C. § 1125(a); (III) federal trade dress dilution under 15 U.S.C. § 1125(c); (IV) patent infringement of U.S. Des. Patent No. D752397 under 35 U.S.C. § 271; (V) patent infringement of U.S. Des. Patent No. D760586 under 35 U.S.C. § 271; (VI) trade dress dilution under TEX. BUS. & COM. CODE § 16.103; (VII) trade dress infringement under Texas common law; (VIII) unfair competition under Texas common law; (IX) misappropriation under Texas common law; and (X) unjust enrichment.

WHEREAS, YETI and Defendants have agreed to enter into this Consent Judgment and Injunction as a part of their agreement to resolve the foregoing dispute, without further resort to litigation;

It is **THEREFORE** hereby **ORDERED, ADJUDGED** and **DECREED** that:

1. The Court has subject matter jurisdiction over this action pursuant to at least 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) & (b), and 1367(a).

2. This Court has personal jurisdiction over Defendants and venue is proper in this judicial district as to this matter at least because, *inter alia*, Defendants are doing business in the State of Texas, including in this District.

3. Defendants have marketed and offered for sale a sleeve and bottle, in configurations that YETI accused of violating YETI's intellectual property rights, which are the Rocky Mountain sleeve and the Rocky Mountain bottle depicted in the photographs above (collectively, the "**Accused Products**").

4. YETI owns all right, title, and interest in and to the trade dress of the YETI 36 oz. Rambler Bottle and the YETI Rambler Colster, including the overall look and appearance of the YETI 36 oz. Rambler Bottle and YETI Rambler Colster as defined in Paragraphs 18 and 20 of the Complaint (respectively, the "**YETI 36 oz. Rambler Bottle Trade Dress**" and the "**YETI Rambler Colster Trade Dress**").

5. Defendants agree that the YETI 36 oz. Rambler Bottle Trade Dress and YETI Rambler Colster Trade Dress are unique, distinctive, non-functional, well known, famous, and have acquired distinctiveness and are associated by consumers with YETI, and that the goodwill associated with the YETI 36 oz. Rambler Bottle Trade Dress and YETI Rambler Colster Trade Dress belong exclusively to YETI.

6. Defendants agree that the YETI 36 oz. Rambler Bottle Trade Dress and YETI Rambler Colster Trade Dress are valid and enforceable.

7. Defendants agree that the YETI 36 oz. Rambler Bottle Trade Dress and YETI Rambler Colster Trade Dress are not essential to the use or purpose of bottles and coozies, respectively, do not affect the cost or quality of bottles and coozies, are not functional, are not the reason the YETI bottles and coozies work, and, outside of the association with YETI's reputation and goodwill, is not important to the commercial success of bottles and coozies generally.

8. Defendants agree that exclusive use of the YETI 36 oz. Rambler Bottle Trade Dress and YETI Rambler Colster Trade Dress by YETI will not put competitors at a significant non-reputation-related disadvantage in the marketplace.

9. Defendants shall not at any time now or in the future manufacture, have manufactured on their behalf, market, offer to sell, sell, use, import, purchase, promote or distribute, whether directly or indirectly, any of the Accused Products.

10. Except as provided herein, each party shall bear its own costs and attorneys' fees.

11. This Court shall retain jurisdiction over the parties for the purpose of enforcing the terms of this Consent Judgment.

12. This Consent Judgment represents a final adjudication of all claims, counterclaims, and defenses that were, or could have been, brought between YETI and Defendants in this case. This Consent Judgment is intended to be final and shall bind YETI and Defendants on all issues that were or could have been litigated in this proceeding and that no appeal shall be taken herefrom.

SO ORDERED:

Date: _____

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

Consented and Agreed to:

ANDREWS KURTH KENYON LLP

DICKINSON WRIGHT PLLC

DATED:

DATED:

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ONTEL PRODUCTS CORPORATION
AND WORLD PACK USA, LLC**